

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: YAHOO! CUSTOMER DATA
SECURITY BREACH LITIGATION,

) 16-MD-02752 LHK
)
) SAN JOSE, CALIFORNIA
)
) OCTOBER 13, 2017
)
) PAGES 1-50
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: MORGAN & MORGAN
BY: JOHN YANCHUNIS
201 NORTH FRANKLIN STREET, 7TH FLOOR
TAMPA, FLORIDA 33602

MILBERG LLP
BY: ARIANA J. TADLER (BY PHONE)
ONE PENNSYLVANIA PLAZA
NEW YORK, NEW YORK 10119

ROBBINS, GELLER, RUDMAN & DOWD
BY: STUART A. DAVIDSON (BY PHONE)
120 EAST PALMETTO PARK ROAD, SUITE 500
BOCA RATON, FLORIDA 33432

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (CONTINUED)

FOR THE DEFENDANTS: HUNTON & WILLIAMS
BY: ANN MARIE MORTIMER
550 SOUTH HOPE STREET, SUITE 200
LOS ANGELES, CALIFORNIA 90071

BY: JOHN J. DELIONADO (BY PHONE)
SAMUEL A. DANON (BY PHONE)
111 BRICKELL AVENUE, SUITE 2500
MIAMI, FLORIDA 33131

1 SAN JOSE, CALIFORNIA

OCTOBER 13, 2017

2 P R O C E E D I N G S

3 (COURT CONVENED AT 11:02 A.M.)

4 THE COURT: GOOD MORNING AND WELCOME.

5 MR. YANCHUNIS: GOOD MORNING.

6 MS. MORTIMER: GOOD MORNING, YOUR HONOR.

7 THE CLERK: PLEASE BE SEATED.

8 YOUR HONOR, CALLING CASE 16-MD-02752, IN RE: YAHOO! INC.,
9 CUSTOMER DATA SECURITY BREACH LITIGATION.

10 COUNSEL, PLEASE STATE YOUR APPEARANCES.

11 MR. YANCHUNIS: GOOD MORNING AGAIN, YOUR HONOR.

12 JOHN YANCHUNIS FOR THE PLAINTIFFS.

13 MS. MORTIMER: GOOD MORNING, YOUR HONOR.

14 ANN MARIE MORTIMER FOR THE DEFENDANTS.

15 THE COURT: OKAY. AND I THINK WE HAVE SOME COUNSEL
16 ON THE PHONE; CORRECT?

17 THE CLERK: YES, YOUR HONOR.

18 COUNSEL, PLEASE STATE YOUR APPEARANCES.

19 MR. DANON: YOUR HONOR, THIS IS SAM DANON FROM
20 HUNTON & WILLIAMS ON BEHALF OF YAHOO!.

21 MR. DELIONADO: AND, YOUR HONOR, THIS IS
22 JOHN DELIONADO FROM HUNTON & WILLIAMS, ALSO ON BEHALF OF
23 YAHOO!.

24 THE COURT: OKAY. WELCOME.

25 MS. TADLER: YOUR HONOR, THIS IS ARIANA TADLER FROM

1 MILBERG ON BEHALF OF PLAINTIFFS.

2 THE COURT: OKAY. WELCOME.

3 ANYONE ELSE? IS THAT IT?

4 THE CLERK: YOUR HONOR, I BELIEVE THERE IS ANOTHER
5 PARTY.

6 MR. DAVIDSON: YOUR HONOR, THIS IS STUART DAVIDSON.
7 CAN YOU HEAR ME?

8 THE COURT: YES, I CAN.

9 MR. DAVIDSON: OKAY. THEY TOLD ME -- I'M SORRY.
10 THEY TOLD ME I WAS GOING TO BE ON MUTE.

11 SO THIS IS STUART DAVIDSON ON BEHALF OF THE PLAINTIFFS,
12 ALSO ON THE PHONE.

13 THE COURT: ALL RIGHT. GOOD AFTERNOON -- GOOD
14 MORNING AND WELCOME.

15 OKAY. SO THIS IS WHAT I AM GOING TO DO: I AM GOING TO
16 GRANT LEAVE TO AMEND TODAY. I'M GOING TO MAKE MY RULING ON THE
17 RECORD.

18 AND I AM GOING TO GRANT A 30(B)(6) DEPOSITION AND I WANT
19 TO MAKE SURE THAT THERE IS SUFFICIENT TIME THAT THIS NEXT
20 AMENDED CONSOLIDATED CLASS ACTION COMPLAINT IS AS CLOSE TO THE
21 FINAL AS WE CAN GET.

22 LET ME GO AHEAD AND MAKE MY RECORD.

23 THE FIRST DATA BREACH IN THIS CASE OCCURRED IN AUGUST OF
24 2013. I'LL REFER TO THIS AS THE 2013 BREACH. HACKERS GAINED
25 ACCESS TO MORE THAN 1 BILLION YAHOO! ACCOUNTS AND STOLE USERS'

1 YAHOO! LOG IN, COUNTRY CODE, RECOVERY E-MAIL, DATA OF BIRTH,
2 HASH PASSWORDS, CELL PHONE NUMBERS, AND ZIP CODES.

3 THE 2013 BREACH ALSO GAVE HACKERS ACCESS TO THE CONTENTS
4 OF USERS' E-MAILS --

5 NOW, THESE ARE OBVIOUSLY THE ALLEGATIONS IN THE COMPLAINT,
6 BUT FOR PURPOSES ON A MOTION TO DISMISS AND AT THESE EARLY
7 PROCEEDINGS, WE ACCEPT THEM AS CORRECT.

8 -- AND THUS EXPOSED PERSONAL IDENTIFICATION INFORMATION
9 THAT USERS INCLUDED IN THE CONTENTS OF THEIR E-MAILS.

10 YAHOO! DID NOT DISCLOSE THIS 2013 BREACH UNTIL DECEMBER 14
11 OF 2016. SO THAT WAS AFTER THREE YEARS, MORE THAN THREE YEARS.
12 AN AUGUST 2013 BREACH WAS DISCLOSED IN DECEMBER, DECEMBER 14 OF
13 2016.

14 SO THE SECOND BREACH OCCURRED IN 2014. I'LL REFER TO THIS
15 AS THE 2014 BREACH. HACKERS GAINED ACCESS TO AT LEAST
16 500 MILLION YAHOO! USER ACCOUNTS.

17 YAHOO! KNEW ABOUT THE 2014 BREACH AS IT WAS HAPPENING, BUT
18 DID NOT PUBLICLY DISCLOSE THE 2014 BREACH UNTIL SEPTEMBER 22ND,
19 2016, ABOUT TWO YEARS LATER.

20 THIS DISCLOSURE CAME JUST TWO MONTHS AFTER YAHOO!
21 ANNOUNCED VERIZON'S PLAN TO ACQUIRE YAHOO! AND, ACCORDING TO
22 PLAINTIFFS, A FEW WEEKS AFTER YAHOO! TOLD THE SECURITIES AND
23 EXCHANGE COMMISSION THAT YAHOO! KNEW OF NO INCIDENTS OF
24 UNAUTHORIZED ACCESS OF PERSONAL DATA THAT MIGHT ADVERSELY
25 AFFECT THE POTENTIAL ACQUISITION.

1 THE THIRD DATA BREACH OCCURRED IN 2015 AND 2016. THE
2 PARTIES ARE REFERRING TO THIS AS THE FORGED COOKIE BREACH.
3 PLAINTIFFS ALLEGE THAT HACKERS IN THE FORGED COOKIE BREACH ARE
4 THE SAME PARTIES INVOLVED IN THE 2014 BREACH, A GROUP THAT
5 INCLUDES TWO RUSSIAN FSB AGENTS.

6 IN A SUBSEQUENT S.E.C. FILING, YAHOO! DISCLOSED THAT ITS
7 SECURITY TEAM KNEW ABOUT THE FORGED COOKIE BREACH AS IT WAS
8 HAPPENING IN 2015 AND 2016. HOWEVER, NO REAL ACTION WAS TAKEN.
9 YAHOO! DID NOT NOTIFY USERS OF THE FORGED COOKIE BREACH UNTIL
10 FEBRUARY OF 2017.

11 SO WE HAVE THE 2013 BREACH BEING DISCLOSED ON DECEMBER 14,
12 2016; WE HAVE THE 2014 BREACH BEING DISCLOSED IN SEPTEMBER, OR
13 ON SEPTEMBER 22ND SPECIFICALLY, 2016; AND THEN WE HAVE THE 2015
14 AND 2016 BREACH BEING DISCLOSED IN FEBRUARY OF 2017.

15 NOW, BASED ON THOSE DISCLOSURES, THIS COURT HAD APPOINTED
16 LEAD PLAINTIFFS' COUNSEL ON FEBRUARY 9TH OF 2017; THE
17 PLAINTIFFS FILED A CONSOLIDATED CLASS ACTION COMPLAINT ON
18 APRIL 12TH, 2017; AND ON AUGUST 30TH, THE COURT ISSUED AN ORDER
19 GRANTING IN PART AND DENYING IN PART YAHOO!'S MOTION TO
20 DISMISS.

21 ON OCTOBER 3RD, 2017, AFTER ALL OF THAT ACTIVITY IN THIS
22 MULTI-DISTRICT LITIGATION HAD TAKEN PLACE -- AND THIS
23 MULTI-DISTRICT LITIGATION TRANSFER ORDER WAS ISSUED FROM THE
24 JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION ON DECEMBER 7TH,
25 2016.

1 ON OCTOBER 3RD, 2017, VERIZON DISCLOSED THAT THE 2013
2 BREACH ACTUALLY AFFECTED ALL 3 BILLION OF YAHOO!'S USERS. SO
3 THAT DISCLOSURE IS NOW COMING ABOUT FOUR YEARS LATE, AND IT IS
4 COMING AFTER I'VE ALREADY RULED ON A MOTION TO DISMISS ON THE
5 CONSOLIDATED CLASS ACTION COMPLAINT.

6 NOW, YOU KNOW, YAHOO!, IN ITS JOINT CASE MANAGEMENT
7 STATEMENT, SAYS THIS IS NOT A NEW ISSUE.

8 WELL, IT IS NEW TO 2 BILLION USERS, OF YOUR USERS. YOU
9 SAY IT'S NOTHING NEW.

10 AND YOU SAY THAT PRESS RELEASE NOTICE IS SUFFICIENT FOR
11 THOSE 2 BILLION USERS. WE'LL SEE.

12 ANYWAY, I DISAGREE WITH YAHOO!. I DO THINK THIS IS A -- I
13 THINK THIS IS A NEW ISSUE. AT LEAST FOR 2 BILLION USERS OF
14 YAHOO!'S, IT IS A NEW ISSUE.

15 AND THE FEDERAL RULES OF CIVIL PROCEDURE STATE THAT LEAVE
16 TO AMEND, QUOTE, "SHALL BE FREELY GIVEN WHEN JUSTICE SO
17 REQUIRES," END QUOTE. FEDERAL RULE OF CIVIL PROCEDURE
18 15(A)(2).

19 THE DECISION OF WHETHER TO GRANT LEAVE TO AMEND
20 NEVERTHELESS REMAINS WITHIN THE DISCRETION OF THE DISTRICT
21 COURT, WHICH MAY DENY LEAVE TO AMEND DUE TO "UNDUE DELAY, BAD
22 FAITH OR DILATORY MOTIVE ON THE PART OF THE MOVANT, REPEATED
23 FAILURE TO CURE DEFICIENCIES BY AMENDMENTS PREVIOUSLY ALLOWED,
24 UNDUE PREJUDICE TO THE OPPOSING PARTY BY VIRTUE OF ALLOWANCE OF
25 THE AMENDMENT, AND FUTILITY OF AMENDMENT." THAT IS QUOTING

1 FROM FOMAN V. DAVIS, 371 U.S. 178 AT 182 FROM 1962.

2 "OUTRIGHT REFUSAL TO GRANT LEAVE TO AMEND WITHOUT A
3 JUSTIFYING REASON IS, HOWEVER, AN ABUSE OF DISCRETION." SAME
4 CITATION.

5 AND THIS IS ALSO CITING FROM LEADSINGER VERSUS BMG MUSIC
6 PUBLICATION, 512 F.3D 522 AT 532, NINTH CIRCUIT, 2008.

7 SO IN THIS INSTANCE, I DO NOT FIND UNDUE DELAY ON BEHALF
8 OF THE PLAINTIFFS. I DO NOT FIND BAD FAITH OR DILATORY MOTIVE
9 ON BEHALF OF THE PLAINTIFFS. I DON'T FIND REPEATED FAILURE TO
10 CURE DEFICIENCIES BY AMENDMENTS PREVIOUSLY ALLOWED. I DO NOT
11 FIND UNDUE PREJUDICE TO THE OPPOSING PARTY BY VIRTUE OF
12 ALLOWANCE OF THE AMENDMENT OR FUTILITY OF AMENDMENT.

13 THIS IS A DISCLOSURE OF 2 BILLION USERS THAT WAS MADE ON
14 OCTOBER 3RD, 2017, AS TO A BREACH THAT OCCURRED IN AUGUST OF
15 2013, MORE THAN FOUR YEARS AGO. AND THIS ANNOUNCEMENT CAME
16 AFTER THE PARTIES HAD ALREADY FILED A CONSOLIDATED CLASS ACTION
17 COMPLAINT AND AFTER THIS COURT HAD ALREADY RULED ON YAHOO!'S
18 FIRST MOTION TO DISMISS BACK ON AUGUST 30TH OF 2017.

19 SO LEAVE TO AMEND IS GRANTED. THAT ALSO APPLIES TO THE
20 CAUSES OF ACTION THAT YOU WANTED TO ADD.

21 NOW, LET'S TALK ABOUT THAT IN A LITTLE MORE DETAIL. SO I
22 WAS A LITTLE BIT BEWILDERED AT THE LAST CASE MANAGEMENT
23 CONFERENCE THAT PLAINTIFFS' COUNSEL SAID, "WELL, WE ONLY DIDN'T
24 ALLEGE ALL OF OUR CAUSES OF ACTION BECAUSE THE COURT TOLD US
25 NOT TO."

1 I'M REALLY PUZZLED. I HAVE NEVER SAID THAT YOU SHOULDN'T
2 FILE ANY CAUSE OF ACTION THAT IS APPROPRIATE. ALL I SAID IS
3 THAT WHEN YOU DO, WE WILL FIGURE OUT A NARROWING PROCESS.

4 AND LET ME JUST PLACE ON THE RECORD THE ANTHEM CASE, OKAY?
5 THE ANTHEM CASE HAD 80 MILLION USERS; YOU HAVE 1 TO 3 BILLION.
6 OKAY? THEY HAD 111 NAMED PLAINTIFFS; YOU HAVE 12. THERE WERE
7 44 ANTHEM AND BLUE CROSS DEFENDANTS; YOU HAVE EFFECTIVELY ONE
8 BECAUSE AABACO IS A WHOLLY OWNED SUBSIDIARY OF YAHOO!. THEY
9 HAD 90 CAUSES OF ACTION, INCLUDING 82 STATE STATUTES; YOU HAVE
10 13 CAUSES OF ACTION, ONE OF WHICH WAS THE ONLINE PRIVACY
11 PROTECTION ACT FOR WHICH THERE IS NO PRIVATE RIGHT OF ACTION.
12 AND YOUR OTHER ONE IS DECLARATORY RELIEF, WHICH IS EFFECTIVELY
13 NOT EVEN A SEPARATE CAUSE OF ACTION IN SOME SENSE.

14 SO I'M -- YOU KNOW, I'M FURTHER DISAPPOINTED THAT IN YOUR
15 JOINT CASE MANAGEMENT, YOU SAY, "WELL, EVEN FOR THOSE, WE DON'T
16 REALLY WANT TO FULLY, FULLY ALLEGE THEM."

17 I'M JUST GOING TO READ FROM THE JOINT CASE MANAGEMENT
18 STATEMENT, PAGE 2, LINES 16 THROUGH 20. "PLAINTIFFS PROPOSE
19 THAT THE SCHEDULE RELATED THERETO CAN REMAIN INTACT IF
20 PLAINTIFFS ARE PERMITTED TO LIST THE VARIOUS STATE STATUTES
21 THEY WILL BE PROCEEDING UNDER SUCH THAT THRESHOLD LEGAL ISSUES
22 SUCH AS FUTILITY AND THE CHOICE-OF-LAW ISSUE CAN BE ADDRESSED,
23 WITHOUT THE NEED FOR THE PROPOSED AMENDED PLEADING CONTAINING
24 ALL OF THE RELATED ALLEGATIONS BEING ATTACHED."

25 SO YOU'RE SAYING, YOU KNOW, IN ADDITION TO THE 13 YOU DID,

1 ONE OF WHICH WAS A CAUSE OF ACTION FOR WHICH THERE'S NO PRIVATE
2 RIGHT OF ACTION AND ANOTHER ONE IS DECLARATORY RELIEF, NOW YOU
3 WANT TO PUT THESE IN JUST BY LISTING THE STATUTE NUMBERS
4 WITHOUT FACTUAL ALLEGATIONS.

5 AND I'M CONCERNED THAT ONE THING I HAVE SAID REPEATEDLY IS
6 I WILL NOT ALLOW A CAUSE OF ACTION THAT JUST LISTS MULTIPLE
7 STATE STATUTES. YOU CAN'T SAY, "WELL, EVERY DATA PRIVACY
8 STATUTE FROM THE FOLLOWING 23 STATES; EVERY CONSUMER PROTECTION
9 STATUTE FROM THE FOLLOWING 49 STATES."

10 EVERY STATUTE HAS TO BE ITS OWN SINGLE CAUSE OF ACTION,
11 AND IF YOU HAVE MANY, THEN I WILL DO WHAT I DID IN ANTHEM,
12 WHICH IS I GAVE ANTHEM THE OPPORTUNITY TO SELECT THREE, BLUE
13 CROSS SELECTED TWO, THE PLAINTIFFS SELECTED FIVE, AND WE
14 LITIGATED THE TEN AND IT WAS NO PROBLEM THAT THERE WERE 90
15 CAUSES OF ACTION.

16 SO THAT'S -- SO LEAVE TO AMEND IS GRANTED. ANY BRIEFING
17 IS VACATED. I THINK IT WOULD NOT BE -- YOU KNOW, THE FEDERAL
18 RULES OF CIVIL PROCEDURE SAY LEAVE TO AMEND SHALL BE FREELY
19 GIVEN WHEN JUSTICE SO REQUIRES. I THINK THE DISCLOSURE OF
20 2 BILLION ADDITIONAL USERS WHO WERE AFFECTED BY THE 2013 DATA
21 BREACH CERTAINLY JUSTIFIES LEAVE TO AMEND.

22 OKAY. SO, NOW, HAVING SAID THAT, HOW MUCH TIME DO YOU
23 NEED TO FILE A SECOND CONSOLIDATED CLASS ACTION COMPLAINT?

24 MS. MORTIMER: YOUR HONOR, IF I MAY?

25 THE COURT: YES.

1 MS. MORTIMER: FIRST, I THINK THERE MAY BE SOME
2 CONFUSION ABOUT THE RECENT ANNOUNCEMENT THAT I THINK IS WORTH
3 CLARIFICATION.

4 THE COURT: UM-HUM.

5 MS. MORTIMER: THE RECENT ANNOUNCEMENT ABOUT
6 3 BILLION USER ACCOUNTS CORRELATES TO ACCOUNTS, NOT USERS.

7 CONSISTENT WITH THE COURT'S ORDERS, WE HAVE PROVIDED
8 PLAINTIFFS, THE DAY AFTER THE ANNOUNCEMENT, THE ACTUAL NUMBERS
9 OF IMPACTED ACCOUNTS.

10 BUT TO PUT IT IN PERSPECTIVE, YOUR HONOR --

11 THE COURT: UM-HUM.

12 MS. MORTIMER: -- THERE WERE 242 MILLION ADULTS IN
13 THE U.S. IN 2013.

14 SO ALTHOUGH THESE ARE USER ACCOUNTS, MANY USERS HAVE
15 MULTIPLE ACCOUNTS; MANY ACCOUNTS ARE INACTIVE ACCOUNTS; MANY
16 ACCOUNTS ARE USED FOR TEST OR OTHER PURPOSES.

17 SO 3 BILLION USER ACCOUNTS GLOBALLY DOES NOT EQUATE TO
18 3 BILLION USERS.

19 AND CERTAINLY WITH RESPECT TO WHAT'S AT ISSUE HERE --

20 THE COURT: SO HOW MANY USERS WERE AFFECTED?

21 MS. MORTIMER: YOUR HONOR, WE'RE STILL IN THE --
22 WE --

23 THE COURT: AND WHY DIDN'T -- WHY DIDN'T YAHOO! FIND
24 THIS OUT? GIVE ME ALL THE FACTS. IF YOU HAVE ALL THE FACTS,
25 GIVE ME ALL THE FACTS. WHEN DID VERIZON DISCOVER THIS AND WHEN

1 DID THEY DISCLOSE IT?

2 MS. MORTIMER: YOUR HONOR, IF I -- LET'S START FROM
3 WHAT THE COURT ASKED WHEN WE FIRST ANNOUNCED THE 2013 BREACH IN
4 DECEMBER. THE COURT ASKED AT THAT TIME -- THE ANNOUNCEMENT
5 INDICATED THAT IT WAS, QUOTE, "AT LEAST A BILLION USER
6 ACCOUNTS."

7 AND AT THAT TIME --

8 THE COURT: OKAY. I'M NOT WORRIED ABOUT THE NUMBERS.

9 MS. MORTIMER: OKAY.

10 THE COURT: TELL ME, THE ANNOUNCEMENT THAT WAS MADE
11 ON OCTOBER 3RD, 2017, WHEN DID VERIZON DISCOVER THAT IT NEEDED
12 TO MAKE THIS ANNOUNCEMENT? THE DATE. I DON'T WANT THE NUMBER.
13 WHAT WAS THE DATE?

14 MS. MORTIMER: THE DATE -- THE DATA WAS CONFIRMED THE
15 DAY BEFORE THE ANNOUNCEMENT WAS MADE.

16 THE COURT: OKAY. AND HOW LONG HAD THEY BEEN
17 INVESTIGATING THAT BREACH?

18 MS. MORTIMER: THE INVESTIGATION WAS LESS THAN
19 30 DAYS IN TOTAL, YOUR HONOR, AS WITH THE EARLIER PART OF THE
20 2013 BREACH.

21 AS YOU MAY RECALL, THAT INFORMATION WAS PROVIDED TO YAHOO!
22 AT THE TIME THROUGH LAW ENFORCEMENT.

23 THE COURT: OKAY. SO -- I'M SORRY. LET ME -- LET ME
24 BACK UP.

25 MS. MORTIMER: SURE.

1 THE COURT: SO SOMETIME AROUND, WHAT, SEPTEMBER 1ST,
2 SEPTEMBER 4TH? OR AFTER THAT DATE IS WHEN VERIZON, WHAT, HAD
3 SOME SENSE THAT THE BREACH WAS MORE EXTENSIVE THAN ORIGINALLY
4 THOUGHT?

5 MS. MORTIMER: NOT AT ALL, YOUR HONOR.

6 THE COURT: OKAY.

7 MS. MORTIMER: THE QUESTION -- AS WITH THE PREVIOUS
8 BREACH, VERIZON AND YAHOO! RECEIVED INFORMATION FROM A THIRD
9 PARTY SOURCE, WHICH IS A SUBJECTIVE AND ONGOING CRIMINAL
10 INVESTIGATION.

11 AT THAT TIME, THERE WAS NO INFORMATION ONE WAY OR ANOTHER
12 AS TO WHETHER IT COULD BE VALIDATED IN A WAY THAT WOULD
13 INDICATE THAT A BROADER USER ACCOUNT BASE WAS IMPACTED THAN WAS
14 ORIGINALLY CONFIRMED.

15 AS SOON AS THE INFORMATION WAS OBTAINED, IT WAS REVIEWED
16 BY OUTSIDE FORENSIC EXPERTS, AND WORKING WITH LAW ENFORCEMENT
17 EXPERTS --

18 THE COURT: OKAY. SO WHEN WAS THAT THIRD PARTY
19 SOURCE NOTICE GIVEN? YOU SAID LESS THAN 30 MONTHS -- 30 DAYS
20 BEFORE?

21 MS. MORTIMER: LESS THAN 30 DAYS, YOUR HONOR.

22 THE COURT: OKAY.

23 MS. MORTIMER: AND THAT TIME WAS USED TO REVIEW AND
24 ANALYZE THE DATA. THE DATA WAS NOT -- ACTUALLY, IT WAS MUCH
25 LESS THAN 30 DAYS THAT THEY HAD THE DATA IN THEIR POSSESSION.

1 THE COURT: UM-HUM.

2 MS. MORTIMER: THEY ANALYZED THE DATA, INCLUDING OVER
3 THE WEEKEND, UP UNTIL THE ANNOUNCEMENT, AND THEN THERE WAS ONE
4 BUSINESS DAY FROM THE TIME THE DATA WAS ANALYZED AND CONFIRMED
5 TO THE ANNOUNCEMENT.

6 BUT AS THE COURT MAY RECALL IN 2013 -- WITH RESPECT TO THE
7 2013 BREACH, IN DECEMBER WHEN THE ANNOUNCEMENT WAS PROVIDED TO
8 THE POPULATION THAT WAS IMPACTED --

9 THE COURT: SO ARE YOU SAYING THAT WEBSITE NOTICE AND
10 PRESS RELEASE NOTICE ARE SUFFICIENT TO COMPLY WITH YOUR NOTICE
11 OBLIGATIONS? IS THAT WHAT YOU'RE SAYING FOR THESE USERS?

12 MS. MORTIMER: YOUR HONOR, ACCORDING TO THE STATUTE,
13 SUBSTITUTED NOTIFICATION IS ACCEPTABLE IF THERE'S MORE THAN
14 500,000 IMPACTED USERS, AND WHETHER YOU CAN'T IDENTIFY THE
15 USERS, IN WHICH YOU CAN ALSO SEND PERSONAL E-MAIL.

16 AT THAT TIME, THE SPECIFIC USER ACCOUNTS WERE NOT
17 IDENTIFIED IN A WAY IN WHICH IT ALLOWED, SO YES, THE STATUTE
18 ALLOWS SUBSTITUTED NOTIFICATION THROUGH PUBLICATION AND THROUGH
19 E-MAIL -- PARDON ME -- THROUGH WEB MAIL.

20 THE COURT: NOW, IS THAT SUBSTITUTE OF NOTIFICATION
21 ONLY WHEN YOU DON'T HAVE OTHER FORMS OF NOTIFICATION?

22 MS. MORTIMER: NO. SUBSTITUTE NOTIFICATION WOULD BE
23 ACCEPTABLE IF IT'S IMPRACTICABLE TO GIVE INDIVIDUAL NOTICE.

24 THE COURT: AND IT IS IMPRACTICABLE? YOU HAVE ALL
25 THESE USER'S E-MAIL ACCOUNTS, DO YOU NOT? AT LEAST THEIR

1 YAHOO! E-MAIL ACCOUNTS, DO YOU NOT?

2 MS. MORTIMER: NO, YOUR HONOR. IN MANY CASES USERS
3 DELETE THEIR E-MAIL ACCOUNTS, PARTICULARLY GIVEN THAT THE
4 BREACHES AT QUESTION WERE SEVERAL YEARS OLD. SO THE BEST FORM
5 OF NOTICE WOULD BE THE PUBLIC FORM OF NOTICE THAT THE STATUTE
6 ALLOWS, THE SUBSTITUTED NOTIFICATION.

7 THE COURT: I DISAGREE WITH THAT.

8 ALL RIGHT. WHETHER IT'S 242 MILLION VERSUS 3 BILLION,
9 EITHER WAY, THERE ARE NEW USERS THAT HAVE BEEN AFFECTED AND
10 THAT IS A CHANGE IN CIRCUMSTANCE THAT JUSTIFIES LEAVE TO AMEND.
11 OKAY. SO THE RULING REMAINS.

12 MS. MORTIMER: I UNDERSTAND, YOUR HONOR.

13 MAY I MAKE ONE MORE CLARIFICATION --

14 THE COURT: LET'S TALK ABOUT -- I'D LIKE TO GO TO THE
15 CASE SCHEDULE.

16 SO HOW MUCH TIME DO YOU NEED? WHEN ARE YOU GOING TO TAKE
17 THE 30(B)(6) DEPOSITION? YOU'LL GET TWO, TWO DEPOSITIONS, ONE
18 NOW BECAUSE WE NEED TO FIGURE OUT WHAT IS THE FULL EXTENT OF
19 THIS SUCH THAT YOU CAN AMEND YOUR COMPLAINT WITH WHATEVER
20 CAUSES OF ACTION ARE APPROPRIATE.

21 MR. YANCHUNIS: I WAS LOOKING TO TAKE IT IN THE NEXT
22 TWO WEEKS, BUT IF --

23 THE COURT: OKAY.

24 MR. YANCHUNIS: IF THE COURT WERE TO ALLOW US UNTIL
25 NOVEMBER THE 10TH TO FILE THE SECOND AMENDED COMPLAINT, THEN --

1 THE COURT: WELL, I WOULD GIVE YOU MORE TIME IF YOU
2 NEED TO -- I MEAN, I AM DISAPPOINTED BECAUSE MY ORDER SAID THAT
3 I WANTED YAHOO! -- I'M GOING TO JUST READ IT. "YAHOO! SHALL
4 EXPEDITE ITS PRODUCTION OF DISCOVERY REGARDING THE RECENT DATA
5 BREACH DISCLOSURE AND INCLUDE A PROPOSAL TO DO SO IN THE
6 OCTOBER 11, 2017 JOINT CASE MANAGEMENT STATEMENT."

7 YAHOO! HAS NOT DONE THAT. THERE IS NOTHING, OTHER THAN
8 SAYING THIS IS NO BIG DEAL --

9 MS. MORTIMER: YOUR HONOR, IF I MAY ADDRESS THAT
10 POINT?

11 THE COURT: THERE'S NOT ANY, ANY PROPOSAL TO EXPEDITE
12 DISCOVERY. SO LET'S JUST FIGURE OUT THE SCHEDULE RIGHT NOW.

13 YOU'VE WAIVED YOUR OPPORTUNITY. I TOLD YOU TO PUT IN A
14 PROPOSAL TO EXPEDITE THE DISCOVERY. YOU CHOSE NOT TO DO SO.
15 THAT'S A WAIVER.

16 SO LET'S JUST FIGURE OUT WHAT'S THE SCHEDULE.

17 MS. MORTIMER: YOUR HONOR, WE DID PROVIDE THE
18 DISCOVERY WITHIN THE DAY THE COURT REQUESTED IT, AND WE'VE ALSO
19 PROVIDED --

20 THE COURT: YOU PROVIDED A LETTER. YOU PROVIDED ONE
21 LETTER.

22 MS. MORTIMER: WHICH HAS THE ONLY DATA WE HAVE ABOUT
23 THE USER ACCOUNTS.

24 BUT WE'VE ALSO PRODUCED OVER 8,000 --

25 THE COURT: OKAY. YOU SAID THAT THERE WAS ALL THIS

1 VALIDATION THAT WAS DONE THE MONTH BEFORE THE ANNOUNCEMENT ON
2 OCTOBER 3RD. I ASSUME THAT WAS NOT ATTACHED TO THE LETTER.

3 MS. MORTIMER: NO, YOUR HONOR.

4 WHAT I SAID WAS THAT THE DATA WAS OBTAINED IN THAT PERIOD
5 OF TIME. WE DID NOT HAVE IT THAT ENTIRE PERIOD OF TIME, AND
6 THERE'S NO WRITTEN REPORT OF THAT YET.

7 HOWEVER, WE HAVE PRODUCED FORENSIC REPORTS FROM 2013.

8 THE COURT: NO, NO. I WANT -- I WANT THE INFORMATION
9 THAT VERIZON USED TO MAKE ITS DISCLOSURE ON OCTOBER 3RD.

10 AND YOU'RE SAYING YOU'VE GIVEN THEM NO DOCUMENTATION,
11 YOU'VE GIVEN THEM ONE LETTER.

12 LET ME SEE IT. CAN I SEE THE LETTER?

13 MS. MORTIMER: YES, YOUR HONOR.

14 THE COURT: DO YOU HAVE IT?

15 MS. MORTIMER: I DO.

16 THE COURT: ALL RIGHT. SO LET'S JUST -- HOW MUCH
17 TIME DO YOU NEED TO AMEND YOUR COMPLAINT? AND THIS -- IF YOU
18 NEED ADDITIONAL DISCOVERY, LET'S DO IT.

19 MR. YANCHUNIS: IF --

20 MS. MORTIMER: ARE YOU -- YOUR HONOR, BEFORE WE
21 STARTED, COUNSEL REPRESENTED THAT THEY WERE INTENDING TO
22 WITHDRAW THEIR REQUEST TO AMEND THE COMPLAINT, SO IF WE COULD
23 CONFER FOR A MOMENT ABOUT WHETHER OR NOT THEY INTEND TO STILL
24 AMEND TO ADD ADDITIONAL CLAIMS, THAT MIGHT BE HELPFUL.

25 MR. YANCHUNIS: I -- I THINK, IN LIGHT OF THE COURT'S

1 RULING, WE'RE GOING TO PROCEED FORWARD WITH AMENDING THE
2 COMPLAINT, AND WE CAN DO THAT BY NOVEMBER THE 10TH, ASSUMING
3 THAT WE CAN GET THE DISCOVERY THAT THE COURT HAS ALLOWED US IN
4 TERMS OF THE PRODUCTION OF THE MATERIAL THAT THE COURT HAS
5 INDICATED HAS NOT BEEN PRODUCED, AS WELL AS A DEPOSITION OF A
6 CORPORATE REPRESENTATIVE.

7 SO, YOU KNOW, I'M VERY SENSITIVE TO YOUR SCHEDULE,
8 OBVIOUSLY, AND I'LL DO EVERYTHING I CAN TO ACCOMMODATE THAT.

9 THE COURT: SO IN YOUR JOINT CASE MANAGEMENT
10 STATEMENT, YOU THOUGHT -- I'M JUST GOING TO READ IT,
11 "PLAINTIFFS BELIEVE THE INCREASED SCOPE IMPACTS HOW EXISTING
12 CLAIMS WILL BE PURSUED, THEIR ABILITY TO ALLEGE FRAUD-BASED OR
13 OTHER INTENTIONAL TORTS, THE MATERIALITY OF ANY OMISSIONS
14 REGARDING DATA SECURITY, AS WELL AS THE AVAILABILITY OF
15 ADDITIONAL TYPES OF DAMAGES, SUCH AS PUNITIVE DAMAGES."

16 SO YOU'RE SAYING NOW YOU'RE NOT INTERESTED IN PURSUING
17 THAT?

18 MR. YANCHUNIS: NO, NO.

19 THE COURT: THEN WHAT ARE YOU SAYING? YOU'RE GOING
20 TO AMEND YOUR COMPLAINT?

21 MR. YANCHUNIS: THAT'S MS. MORTIMER'S
22 MISCOMMUNICATION, OR MISUNDERSTANDING.

23 WHAT I RELATED TO HER WAS IN CONNECTION WITH OTHER STATE
24 DATA BREACH STATUTES.

25 MS. MORTIMER: YES, YOUR HONOR.

1 MR. YANCHUNIS: NOT A FRAUD-BASED CLAIM, NOT A CLAIM
2 FOR PUNITIVE DAMAGES, WHICH WE BELIEVE WE WOULD LIKE TO EXPLORE
3 THE OPPORTUNITY.

4 THE COURT: ALL RIGHT. SO YOU WANT TO EXPLORE
5 WHETHER YOU WOULD AMEND THE COMPLAINT IN LIGHT OF THE
6 OCTOBER 3RD ANNOUNCEMENT?

7 MR. YANCHUNIS: ABSOLUTELY.

8 THE COURT: BUT YOU ARE NOT GOING TO PURSUE WHAT YOU
9 RAISED AT THE LAST CMC, WHICH WAS SUBSTITUTING IN OTHER STATE
10 STATUTES FOR THE -- REMIND ME WHICH. WHICH STATUTE WERE YOU
11 SUBSTITUTING IN FOR?

12 MR. YANCHUNIS: THESE WERE --

13 MS. MORTIMER: THE CRA.

14 THE COURT: NON-CALIFORNIA STATUTES.

15 MR. YANCHUNIS: OTHER STATE BREACH NOTIFICATION
16 STATUTES.

17 THE COURT: OKAY. THAT'S FINE.

18 I MEAN, YOU JUST HAVE AN OPPORTUNITY TO AMEND YOUR
19 COMPLAINT. YOU DECIDE WHAT GOES IN OR NOT. IF YOU WANTED TO
20 ADD THOSE, ESPECIALLY BASED ON THERE MAY BE POTENTIAL
21 ADDITIONAL USERS FROM OTHER NON-CALIFORNIA STATES --

22 MR. YANCHUNIS: YES, MA'AM.

23 THE COURT: -- I'VE GIVEN YOU LEAVE TO AMEND. BUT
24 YOU CAN ALWAYS CHOOSE NOT TO DO THAT.

25 MR. YANCHUNIS: YES, MA'AM. THANK YOU.

1 THE COURT: YES. OKAY, SO WHEN ARE YOU GOING TO
2 AMEND? CAN YOU -- I JUST DON'T WANT TO HAVE TO BE IN A
3 SITUATION WHERE WE ARE CONTINUALLY SORT OF GOING BACK TO SQUARE
4 ONE.

5 MR. YANCHUNIS: ABSOLUTELY.

6 THE COURT: I -- I HOPE THERE AREN'T ANY FURTHER
7 DISCLOSURES.

8 MS. MORTIMER: YOUR HONOR, THE SCHEDULE THAT WE
9 PROPOSED WAS IN LIGHT OF -- IT WAS MADE AFTER THE OCTOBER 3RD
10 DISCLOSURE IN COOPERATION WITH THE PLAINTIFFS' COUNSEL. WE
11 TRIED TO TAKE EXACTLY THESE ISSUES INTO ACCOUNT AND, OF COURSE,
12 THIS COURT'S SCHEDULE SO THAT IT WOULD NOT UNDULY DELAY OR
13 IMPOSE ON THE SCHEDULE.

14 THE COURT: SO LET ME -- LET ME HEAR FROM
15 MR. YANCHUNIS.

16 I -- I HOPE THERE ARE NO FURTHER DISCLOSURES WHICH MAKE US
17 HAVE TO GO BACK TO STEP ONE, BUT WE ARE CURRENTLY BACK AT STEP
18 ONE.

19 MR. YANCHUNIS: YES, MA'AM.

20 THE COURT: AND I WOULD LIKE THIS TO BE THE
21 DEFINITIVE COMPLAINT, OKAY? SO WHEN -- I'M TELLING YOU, IF YOU
22 NEEDED MORE TIME THAN NOVEMBER 10TH, SO BE IT. YOU WOULD GET
23 IT. HOW MUCH TIME DO YOU NEED TO MAKE THIS HOPEFULLY --
24 HOPEFULLY, IF THERE'S NO FURTHER DISCLOSURES, THE SORT OF
25 DEFINITIVE COMPLAINT? AND THEN WE CAN OPERATE FROM THERE.

1 MR. YANCHUNIS: YOUR HONOR, I AM FINE WITH
2 NOVEMBER THE 10TH ON THE BASIS THAT THE COURT HAS ORDERED THAT
3 EXPEDITED DISCOVERY. I HAVE NO REASON TO DOUBT THAT
4 MS. MORTIMER AND HER TEAM WILL BE RESPONSIVE --

5 THE COURT: NOW --

6 MR. YANCHUNIS: -- AND COOPERATIVE.

7 THE COURT: -- YOU SHOULD ALSO -- I WANT TO SET A
8 SCHEDULE FOR YOU TO -- WHETHER YOU NEED TO SERVE ANY ADDITIONAL
9 DISCOVERY REQUESTS WRITTEN AND TO GET RESPONSES BACK ON AN
10 EXPEDITED BASIS, SO LET'S SET THAT RIGHT NOW.

11 WHEN ARE YOU GOING TO BE ABLE TO SERVE -- HAVE YOU SERVED
12 ANY ADDITIONAL DISCOVERY REQUESTS SINCE THE OCTOBER 3RD
13 ANNOUNCEMENT?

14 MR. YANCHUNIS: NO, OTHER THAN THE OUTLINED 30(B)(6).
15 WE WOULD FILE THAT ON MONDAY. WE'D SERVE THAT ON MONDAY.

16 MS. MORTIMER: YOUR HONOR, THE EXISTING DISCOVERY
17 REQUESTS ARE CRAFTED BROAD ENOUGH TO INCLUDE, AND WE PRODUCED
18 DOCUMENTS RELATED TO, THE 2013 BREACH.

19 THE COURT: WELL, WHAT CONCERNS ME IS YOU'RE SAYING
20 "WE'RE NOT GOING TO GIVE HIM ANY DOCUMENTS ABOUT THE
21 INVESTIGATION OF 30 DAYS THAT LED TO THE OCTOBER 3RD
22 ANNOUNCEMENT UNTIL A REPORT IS READY." AND --

23 MS. MORTIMER: THAT'S NOT --

24 THE COURT: YOU KNOW HOW A REPORT GOES.

25 MS. MORTIMER: YEAH, THAT'S NOT --

1 THE COURT: THAT COULD BE SOME TIME. SO WHEN ARE YOU
2 GOING TO PRODUCE ANY DOCUMENTS? CERTAINLY THERE'S SOME -- I
3 CAN'T IMAGINE EVERYONE IS DOING EVERYTHING ORALLY AT VERIZON
4 AND YAHOO! RIGHT NOW ABOUT THE OCTOBER 3RD DISCLOSURE.

5 MS. MORTIMER: IT WAS A FORENSIC EXAMINATION OF FILES
6 PROVIDED TO US.

7 THE COURT: OKAY. SO CAN YOU --

8 MS. MORTIMER: THAT'S PART OF AN ACTIVE LAW
9 ENFORCEMENT INVESTIGATION, WHICH PUTS SOME LIMITATIONS, YOUR
10 HONOR.

11 HOWEVER, WHAT WE HAVE PROVIDED IS WHAT WE HAVE, WHICH IS
12 THE IMPACTED POPULATION.

13 WE'VE ALSO PROVIDED THE FORENSIC REPORTS THAT WE HAVE
14 WHICH REFLECT MOST --

15 THE COURT: OKAY. SO WHAT I'M HEARING IS YOU ARE NOT
16 GOING TO PRODUCE ANYTHING ELSE. YOU'VE PRODUCED THE USER
17 INFORMATION IN THE LETTER OF OCTOBER 6TH, AND THERE'S NOTHING
18 ELSE THAT YOU'RE GOING TO PROVIDE FOR THEM.

19 MS. MORTIMER: YOUR HONOR, I WILL CERTAINLY
20 INVESTIGATE WHETHER THERE'S ANY OTHER DISCOVERABLE MATERIAL
21 THAT WE CAN PRODUCE, AND WE WILL DO SO ON AN EXPEDITED BASIS IF
22 THERE IS.

23 HOWEVER, WE HAVE PRODUCED THE FORENSIC REPORTS THAT WE
24 HAVE THAT WERE GENERATED ON OR NEAR THE TIME OF THE 2013
25 BREACH, AS WELL AS DOCUMENTS RELATED TO SECURITY AT THAT TIME.

1 THE COURT: BUT NONE OF THAT ALERTED VERIZON AND
2 YAHOO! AS TO POTENTIALLY AN ADDITIONAL 2 BILLION ACCOUNTS BEING
3 AFFECTED.

4 MS. MORTIMER: AND THE REASON FOR THAT, YOUR HONOR,
5 IS BECAUSE THERE ARE NO ARTIFACTS ON THE NETWORK SYSTEM ON THE
6 2013 BREACH, AND YAHOO! WAS ONLY ALERTED TO THE BREACH THROUGH
7 LAW ENFORCEMENT.

8 THE COURT: OKAY. WHAT I -- WHAT I -- WE DO A LOT OF
9 CRIMINAL CASES HERE AS WELL, RIGHT? I DON'T UNDERSTAND, YOU'RE
10 SAYING, "ANY EVIDENCE THAT WE'VE BEEN BREACHED, WE CANNOT TURN
11 OVER."

12 MS. MORTIMER: THAT'S NOT WHAT I'M SAYING, YOUR
13 HONOR.

14 THE COURT: OKAY. WHAT ARE YOU SAYING? BECAUSE I
15 DON'T THINK A CRIMINAL INVESTIGATION GIVES YOU FULL
16 PRIVILEGE --

17 MS. MORTIMER: AND THAT'S NOT WHAT I'M SAYING.

18 THE COURT: -- NOT TO COMPLY WITH CIVIL DISCOVERY.

19 MS. MORTIMER: I APOLOGIZE IF I MISCOMMUNICATED THAT.

20 THE COURT: OKAY.

21 MS. MORTIMER: WHAT I'M SAYING IS IN THIS INSTANCE,
22 WE'VE PRODUCED THE DOCUMENTS IN OUR POSSESSION OF FORENSIC
23 REPORTS THAT ARE CONTEMPORANEOUS WITH THE BREACH AND --

24 THE COURT: BUT YOU'RE SAYING -- BUT THAT DID NOT
25 GIVE YAHOO! AND VERIZON -- IT DIDN'T MAKE THEM AWARE OF

1 THESE --

2 MS. MORTIMER: IT DID NOT, YOUR HONOR.

3 THE COURT: -- WHAT DO YOU WANT TO CALL THEM,
4 2 BILLION ACCOUNTS?

5 MS. MORTIMER: USER ACCOUNTS, YOUR HONOR.

6 THE COURT: USER ACCOUNTS, OKAY.

7 SO IT DIDN'T ALERT VERIZON AND YAHOO! TO THESE 2 BILLION
8 USER ACCOUNTS, SO I JUST DON'T SEE -- YOU UNDERSTAND WHAT I'M
9 TRYING TO DO, RIGHT?

10 MS. MORTIMER: ABSOLUTELY, YOUR HONOR.

11 THE COURT: WE HAVE ALREADY GONE THROUGH A
12 CONSOLIDATED CLASS ACTION COMPLAINT; I HAVE ALREADY DONE, WHAT,
13 A, LIKE, 92-PAGE ORDER -- 93-PAGE ORDER ON A MOTION TO DISMISS.

14 SO IT'S JUST DISAPPOINTING NOW TO HAVE TO GO BACK TO
15 SQUARE ONE AND GET ANOTHER COMPLAINT.

16 AND THEN WHAT I'M HEARING FROM YOU IS, "WELL, YOU'RE NOT
17 GOING TO GET ANYTHING ELSE FROM US BECAUSE WE GAVE IT TO YOU.
18 WE GAVE YOU EVERYTHING WE HAD IN AUGUST 2013, EVEN THOUGH IT
19 DIDN'T ALERT VERIZON OR YAHOO! TO THE FACT THAT 2 BILLION USER
20 ACCOUNTS WERE AFFECTED. AND THEN EVERYTHING ELSE IS SUBJECT TO
21 CRIMINAL INVESTIGATION, SO WE'RE ONLY GOING TO GIVE THEM THE
22 USER INFORMATION WHICH I ALREADY PROVIDED IN A LETTER OF
23 OCTOBER 6 TH."

24 MS. MORTIMER: NO, YOUR HONOR. LET ME CLARIFY.

25 THE COURT: SO LET ME JUST SET SOME DATES, OKAY, AND

1 I WILL HAVE YOU GUYS COME IN EVERY TWO WEEKS BECAUSE I'M GOING
2 TO MONITOR THIS.

3 MS. MORTIMER: IF WE HAVE INFORMATION --

4 THE COURT: SO LET'S COME IN EVERY TWO WEEKS. LET ME
5 HEAR, WHEN ARE YOU GOING TO SERVE DISCOVERY REQUESTS AND WHEN
6 ARE THE RESPONSES GOING TO BE SERVED?

7 AND THEN I WILL MAKE YOU COME IN EVERY TWO WEEKS, OR AT
8 LEAST FILE A JOINT DISCOVERY STATUS REPORT EVERY TWO WEEKS,
9 BECAUSE THIS ALREADY IS BRINGING US BACK TO SQUARE ONE. I'D
10 LIKE TO PREVENT FURTHER DELAYS IN THE CASE. ALL RIGHT?

11 SO WHEN ARE YOU -- I'D LIKE YOU TO VERY PROMPTLY SERVE
12 WHAT -- I MEAN, I'M HEARING YOU WANT TO AMEND IN, WHAT --

13 MR. YANCHUNIS: BY THE 10TH OF NOVEMBER.

14 THE COURT: -- FOUR WEEKS.

15 MR. YANCHUNIS: YES, MA'AM.

16 THE COURT: SO I'M DISAPPOINTED TO HEAR THAT YOU
17 HAVEN'T SERVED ANY DISCOVERY. YOU HAVEN'T EVEN -- IT SOUNDS
18 LIKE YOU HAVEN'T EVEN DRAFTED YOUR 30(B)(6) NOTICE. IS IT
19 DRAFTED?

20 MR. YANCHUNIS: WELL, NO. BUT THE AREAS ARE
21 ARTICULATED IN THE REPORT THAT WE SUBMITTED TO THE COURT, WHICH
22 I GAVE TO THE OTHER SIDE.

23 THE COURT: WHAT'S IN THERE? I'M SORRY, I DON'T
24 UNDERSTAND THAT.

25 MR. YANCHUNIS: THE AREAS OF INQUIRY REQUIRED BY

1 30(B)(6) ARE ACTUALLY ARTICULATED IN THE STATEMENT ITSELF.

2 THE COURT: WELL, THEN WHY DO YOU NEED UNTIL MONDAY
3 TO SERVE THE 30(B)(6) NOTICE --

4 MR. YANCHUNIS: NO, I CAN SERVE THAT --

5 THE COURT: -- IF IT'S ALREADY READY TO GO?

6 MR. YANCHUNIS: I CAN SERVE THAT NOW.

7 IT'S THE QUESTION OF THE REQUEST TO PRODUCE. I'LL SERVE
8 THAT ON MONDAY.

9 THE COURT: ALL RIGHT. SO THE 30(B)(6) NOTICE -- I
10 MEAN, YOU'VE GOT FOUR WEEKS. YOU NEED TO GET THIS DISCOVERY SO
11 THAT YOU CAN AMEND THIS COMPLAINT IN TIME.

12 MR. YANCHUNIS: ABSOLUTELY, YOUR HONOR.

13 THE COURT: SO, YOU KNOW, THE FIRST CASE THAT WAS
14 FILED BEFORE ME WAS FILED SEPTEMBER 22ND OF 2016, SO WE ARE
15 ALREADY WELL OVER A YEAR AND WE'RE TALKING ABOUT NOW AMENDING
16 THE COMPLAINT.

17 SO --

18 MS. MORTIMER: AND A NUMBER -- A LOT OF DISCOVERY HAS
19 BEEN PRODUCED, YOUR HONOR. AND TO CLARIFY, IF THERE IS
20 DISCOVERABLE MATERIAL, WHICH IS LIMITED BECAUSE THERE AREN'T
21 ARTIFACTS ON THE YAHOO! SYSTEM, WE WILL ABSOLUTELY PRODUCE IT
22 ON AN EXPEDITED BASIS.

23 THE COURT: ALL RIGHT. NOW, IF THEY MAKE A CRIMINAL
24 INVESTIGATION PRIVILEGE OBJECTION, THEN I WANT YOU TO LITIGATE
25 THAT BEFORE THE DISCOVERY JUDGE IN THIS CASE, WHO'S

1 JUDGE COUSINS. OKAY?

2 ALL RIGHT. SO THE 30(B)(6) NOTICE WILL BE -- IT SHOULD BE
3 SERVED TODAY.

4 MR. YANCHUNIS: IT'LL BE SERVED TODAY.

5 THE COURT: SERVE IT TODAY.

6 SO ANY OTHER DOCUMENT REQUESTS OR OTHER DISCOVERY REQUESTS
7 NEED TO BE SERVED WHEN? WHEN ARE YOU GOING TO DO THAT?

8 MR. YANCHUNIS: I'LL DO IT BY MONDAY. BUT IF THE
9 COURT WANTS ME TO DO IT THIS WEEKEND, SATURDAY OR SUNDAY --

10 THE COURT: MONDAY IS FINE. MONDAY IS OCTOBER 16TH.

11 MR. YANCHUNIS: OKAY.

12 THE COURT: OKAY. NOW, LET'S SET A DATE BY WHICH --
13 I MEAN, THIS -- THAT'S WHY I'M WONDERING HOW YOU'RE FIGURING
14 NOVEMBER 10TH IS A DOABLE DATE. I WOULD EXPECT THAT YAHOO!
15 NEEDS AT LEAST TWO WEEKS FOR DISCOVERY RESPONSES, SO I'D SAY
16 OCTOBER 30TH.

17 MS. MORTIMER: AND, YOUR HONOR, ARE WE TALKING ABOUT
18 DISCOVERY RESPONSES THAT ARE SPECIFIC TO THE OCTOBER 3RD
19 DISCLOSURE?

20 THE COURT: I WOULD SAY WHATEVER IS NEEDED TO AMEND
21 THE COMPLAINT AT THIS POINT. IF WE'RE GOING TO HAVE A
22 NOVEMBER 10TH DEADLINE FOR AMENDMENT OF THE COMPLAINT, WE NEED
23 THAT DISCOVERY.

24 MS. MORTIMER: YOUR HONOR, THE PARTIES HAVE NOT --
25 ALTHOUGH DISCOVERY HAS BEEN ONGOING AND WE HAVE PRODUCED OVER

1 8,000 PAGES OF DOCUMENTS, INCLUDING THE MOST TAILORED TO THE
2 SPECIFIC QUESTIONS OF THE BREACH, THE PARTIES HAVE NOT
3 FINALIZED THE SEARCH TERMS, SO IT WOULD BE DIFFICULT TO PRODUCE
4 EVERYTHING THAT MAY BE RESPONSIVE BY THAT DATE.

5 THE COURT: SO LET'S MOVE THE NOVEMBER 10TH DATE OUT.

6 MR. YANCHUNIS: YES, YOUR HONOR.

7 THE COURT: IT'S LOOKING LIKE THAT'S GOING TO BE NOT
8 FEASIBLE.

9 MR. YANCHUNIS: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. SO TELL ME WHEN IT'S GOING TO
11 BE -- SO NO SEARCH TERMS HAVE BEEN AGREED TO YET?

12 MS. MORTIMER: SEARCH TERMS HAVE BEEN AGREED TO, YOUR
13 HONOR, BUT THEY HAVEN'T BEEN FINALIZED YET. SO I BELIEVE
14 THERE'S STILL A FEW OUTSTANDING --

15 THE COURT: SO WHAT'S THE DIFFERENCE BETWEEN "AGREED
16 TO" AND "FINALIZED"? WHY CAN'T YOU PRODUCE WITH WHAT'S BEEN
17 AGREED TO? HAS ANYTHING BEEN PRODUCED WITH REGARD TO WHAT
18 SETTLEMENT TERMS HAVE BEEN -- OR SEARCH TERMS HAVE BEEN AGREED
19 TO?

20 MS. MORTIMER: YES, YOUR HONOR.

21 MR. YANCHUNIS: WE RECEIVED 10,000 PAGES OF
22 DOCUMENTS, APPROXIMATELY, INCLUDING THE REPORTS THAT SHE
23 INDICATED.

24 THE COURT: UM-HUM.

25 MS. MORTIMER: WHICH ARE ALL THE FORENSIC REPORTS

1 THAT ARE CONTEMPORANEOUS, YOUR HONOR, AS WELL AS THE REPORT
2 RELATED TO THE 2014 BREACH.

3 THE COURT: OKAY. 10,000 PAGES FOR A CASE OF THIS
4 COMPLEXITY AND MAGNITUDE IS NOT A LARGE NUMBER.

5 MR. YANCHUNIS: AND THERE'S -- I DO NOT DISPUTE THAT.

6 AND I WILL TELL YOU THAT THEY DON'T POINT TO THE PROBLEM
7 THAT WE'RE HERE TODAY ABOUT, AND THAT IS WHY THIS WASN'T
8 DISCOVERED IN 2013, '14, '15, '16.

9 I MEAN, I BEAR YOUR FRUSTRATION AND I'M --

10 THE COURT: WELL, ALL RIGHT. I'M SORRY. I'M GOING
11 TO HAVE TO MANAGE THIS CASE MORE CLOSELY THAN I THOUGHT. I
12 DIDN'T REALIZE SEARCH TERMS HAVE NOT BEEN AGREED TO YET.

13 ALL RIGHT. SO GIVE ME A DEADLINE BY WHICH YOU'RE GOING TO
14 FINALIZE YOUR SEARCH TERMS.

15 MR. YANCHUNIS: NEXT --

16 MS. MORTIMER: I THINK MOST SEARCH TERMS --

17 THE COURT: AND I'M GOING TO HAVE YOU FILE THEM.
18 FILE THEM WITH THE COURT.

19 MR. YANCHUNIS: YES, MA'AM.

20 THE COURT: I WANT THEM PART OF THE RECORD.

21 SO WHEN ARE YOU GOING TO FILE YOUR FINALIZED SEARCH TERMS?
22 IS THIS A MS. TADLER CONVERSATION?

23 MR. YANCHUNIS: BY NEXT FRIDAY.

24 THE COURT: OKAY. THAT IS OCTOBER 20TH.

25 MR. YANCHUNIS: YES, MA'AM.

1 THE COURT: ALL RIGHT. WHAT ELSE IS OUTSTANDING THAT
2 WE NEED TO GET SO THAT WE CAN HAVE, HOPEFULLY, A DEFINITIVE
3 CONSOLIDATED AMENDED COMPLAINT SO WE CAN MOVE FORWARD FROM
4 THERE? WHAT ELSE?

5 SO IF YOU FINALIZE THE TERMS ON THE 20TH, THEN WHEN CAN WE
6 GET THIS DISCOVERY? HOW MUCH OF THE DISCOVERY WITH REGARD TO
7 AGREED TO SEARCH TERMS IS STILL OUTSTANDING?

8 MS. MORTIMER: YOUR HONOR, WE SPECIFICALLY AND
9 INTENTIONALLY PRIORITIZED THE PRODUCTION, EVEN THOUGH WE HADN'T
10 FINALIZED THE TERMS, TO THE INFORMATION WE HAD THAT'S MOST
11 RELEVANT TO THE BREACHES.

12 THE COURT: SO IS THE ANSWER NONE?

13 MS. MORTIMER: NO, YOUR HONOR.

14 THE COURT: THE ANSWER IS NONE?

15 MS. MORTIMER: NO, YOUR HONOR.

16 THE COURT: HOW MUCH IS -- I JUST WANT SPECIFIC
17 ANSWERS.

18 MS. MORTIMER: THE 10,000 PAGES, YOUR HONOR, IS ALL
19 RESPONSIVE TO WHAT WE ANTICIPATE TO BE THE MAIN SEARCH TERMS.

20 AND WE DON'T ANTICIPATE THAT COMPLETION OF DISCOVERY, NOR
21 WOULD IT BE TYPICAL TO COMPLETE DISCOVERY, PRIOR TO FINALIZING
22 THE COMPLAINT.

23 IF THE COURT'S CONCERNED THAT THERE'S ADDITIONAL
24 INFORMATION --

25 THE COURT: 10,000 PAGES OF DISCOVERY IN A CASE OF

1 THIS MAGNITUDE IS WOEFULLY SMALL. 10,000 PAGES?

2 MS. TADLER: YOUR HONOR, THIS IS --

3 THE COURT: YEAH.

4 MS. TADLER: THIS IS ARIANA TADLER. IF I MAY?

5 WE ARE EAGER TO RESOLVE THE DISCUSSIONS ABOUT THE SEARCH
6 TERMS AND CERTAINLY WILL COMPLETE THAT BY THE DATE THAT
7 MR. YANCHUNIS HAS INDICATED.

8 WE HAVE EVERY EXPECTATION, AND I HOPE THAT WE'RE RIGHT,
9 THAT ONCE THOSE SEARCH TERMS ARE APPLIED, THERE'S AN
10 EXPECTATION THAT THE VOLUME OF DATA TO BE PRODUCED IN THIS CASE
11 IS EXTREMELY LARGE.

12 THE COURT: ALL RIGHT. TELL ME WHEN THAT'S GOING TO
13 BE PRODUCED.

14 MS. TADLER: WE'RE READY TO GO.

15 MS. MORTIMER: BUT, YOUR HONOR, AGAIN, WE THINK WE
16 CAN, AND HAVE, AND WILL EXPEDITE INFORMATION RELATED TO THE
17 2013 BREACH.

18 THE COURT: NO. I WANT A DATE.

19 MS. MORTIMER: BUT DISCOVERY SHOULDN'T BE FINALIZED
20 BEFORE THE AMENDMENT OF THE COMPLAINT GIVEN THE VOLUME AND THE
21 SIZE AND THE COMPLEXITY. IS IT IMPORTANT THAT THE PLAINTIFF --

22 THE COURT: YOU'VE ONLY PRODUCED 10,000 PAGES? THE
23 MDL PANEL TRANSFERRED THIS CASE LAST YEAR. IT IS OCTOBER
24 THE 13TH.

25 MS. MORTIMER: YOUR HONOR, WE HAVE BEEN WORKING

1 COOPERATIVELY --

2 THE COURT: ALL RIGHT. LET ME -- LET ME -- ALL
3 DOCUMENTS RESPONSIVE TO THE DISCOVERY REQUESTS THAT WILL BE
4 SERVED ON OCTOBER 16TH MUST BE PRODUCED BY NOVEMBER THE 13TH.
5 AND THAT INCLUDES INTERROGATORIES, THAT INCLUDES REQUESTS FOR
6 ADMISSIONS.

7 SO ALL -- I WOULD SAY ALL DISCOVERY RESPONSIVE TO
8 DISCOVERY REQUESTS SERVED ON OCTOBER 16TH. SO THAT WILL NOT BE
9 THE FULL UNIVERSE, BUT IT SHOULD BE RESPONSIVE TO THIS LATEST
10 DISCLOSURE.

11 AND I DON'T WANT TO HEAR, "WELL, BUT WE ALREADY GAVE THEM
12 WHAT WE HAD FROM AUGUST OF 2013," BECAUSE THAT OBVIOUSLY WASN'T
13 SUFFICIENT.

14 MS. MORTIMER: YOUR HONOR, WE WILL --

15 THE COURT: IT DIDN'T PUT YOUR CLIENT ON NOTICE OF
16 2 BILLION USER ACCOUNTS, OKAY?

17 MS. MORTIMER: YOUR HONOR, WE WILL PRODUCE ANY
18 DISCOVERY WE HAVE RESPONSIVE AND RELATED TO THE RECENT
19 ANNOUNCEMENT BY THE DEADLINE SET AND RESPONSIVE TO THE REQUESTS
20 MADE.

21 THE COURT: NO, YOU'RE NOT GOING TO NARROW IT. ALL
22 DISCOVERY RESPONSIVE TO THE DISCOVERY REQUESTS SERVED ON
23 OCTOBER 16, 2017, IS DUE ON NOVEMBER 13TH.

24 MS. MORTIMER: YOUR HONOR, WITHOUT SEEING THE BREADTH
25 OF THE REQUEST, I CAN'T GUARANTEE THAT WE CAN PRODUCE IT IN

1 THAT TIMEFRAME. PRESUMABLY COUNSEL WILL NARROW IT TO WHAT IS
2 NECESSARY RELATED TO THE MOST RECENT BREACH.

3 THE COURT: WELL, THAT'S ACTUALLY GIVING MORE TIME
4 THAN YOU WOULD NORMALLY HAVE. UNDER THE FEDERAL RULES OF CIVIL
5 PROCEDURE, YOU'D HAVE 30 DAYS.

6 MS. MORTIMER: AGAIN, YOUR HONOR, WE'VE BEEN WORKING
7 COOPERATIVELY. BUT THERE IS A LARGE VOLUME OF DOCUMENTS, AND
8 TRYING TO TAILOR IT AND REVIEW IT IN A PRACTICABLE WAY, WE'LL
9 DO OUR BEST TO BE RESPONSIVE.

10 HAVING SEEN THE REQUESTS, IF THERE'S A PROBLEM, THEN WE'LL
11 IMMEDIATELY RAISE IT WITH THE COURT.

12 BUT I UNDERSTAND THE COURT'S CONCERN ABOUT NOT CAUSING
13 ADDITIONAL DELAY.

14 THE COURT: OKAY. SO 30(B)(6) -- THE 30(B)(6) NOTICE
15 WILL BE SERVED ON OCTOBER 13TH; DISCOVERY REQUESTS WILL BE
16 SERVED ON OCTOBER 16TH; THAT DISCOVERY WILL BE RESPONDED TO --
17 AND I DON'T WANT JUST BOILERPLATE OBJECTIONS, THIS SHOULD BE
18 DOCUMENT PRODUCTION -- THAT IS DUE ON NOVEMBER 13TH OF 2017.

19 NOW, HOW MUCH -- WHEN DO YOU NEED -- DO YOU WANT TO TAKE
20 THE DEPOSITION AFTER YOU GET THE DOCUMENTS AND THE DISCOVERY
21 REQUESTS?

22 MR. YANCHUNIS: IT PROBABLY WOULD BE MORE MEANINGFUL
23 IF I COULD DO THAT. BUT THERE AGAIN, I'M -- I'LL WORK WITH
24 WHATEVER -- I'LL DO WHATEVER YOU WANT ME TO DO.

25 THE COURT: OKAY. THAT'S NOVEMBER 13TH. WELL, TELL

1 ME WHAT YOU NEED. I --

2 MR. YANCHUNIS: SO I CAN TAKE THAT 30(B)(6) WITHOUT A
3 DOCUMENT.

4 THE COURT: OKAY. SO JUST TELL ME WHEN YOU WANT TO
5 TAKE THE DEPOSITION. YOU TELL ME WHEN YOU WANT TO TAKE THE
6 DEPOSITION.

7 MR. YANCHUNIS: I WOULD LIKE TO TAKE IT WITHIN THE
8 TIMEFRAME THAT THE COURT HAS GIVEN THEM TO RESPOND TO THE
9 DISCOVERY, SO BETWEEN NOW AND THE 17TH OF NOVEMBER. THAT OUGHT
10 TO GIVE THEM AN OPPORTUNITY TO PREPARE A WITNESS, EDUCATE -- OR
11 WITNESSES TO RESPOND TO THOSE AREAS OF INQUIRY THAT'LL BE
12 SERVED TODAY.

13 THE COURT: OKAY. SO THEN A 30(B)(6) DEPOSITION WILL
14 TAKE PLACE BY NOVEMBER 17TH. ALL RIGHT?

15 NOW, WHEN CAN YOU AMEND YOUR COMPLAINT? AND HOPEFULLY
16 THIS WILL BE THE DEFINITIVE COMPLAINT AND WE CAN JUST NARROW
17 FROM THAT POINT FORWARD. WHAT'S YOUR REALISTIC DATE?

18 MR. YANCHUNIS: MID-DECEMBER.

19 THE COURT: OKAY. SO DECEMBER 15TH?

20 MR. YANCHUNIS: YES, MA'AM.

21 THE COURT: THAT WILL BE THE FILING OF THE SECOND
22 CONSOLIDATED CLASS ACTION COMPLAINT.

23 OKAY. NOW, I UNDERSTAND THERE ARE THE HOLIDAYS. I ASSUME
24 THERE WILL BE A MOTION TO DISMISS. WHEN WOULD YOU LIKE TO FILE
25 THAT?

1 (DISCUSSION OFF THE RECORD BETWEEN COUNSEL.)

2 MS. MORTIMER: YOUR HONOR, IF WE COULD FILE THE
3 MOTION TO DISMISS ON JANUARY 20TH?

4 THE COURT: OKAY. THAT'S A SATURDAY. WHAT ABOUT THE
5 19TH?

6 MS. MORTIMER: AH, MAKES MORE SENSE.

7 THE COURT: OKAY. SO FILE THE MOTION TO DISMISS,
8 PLEASE, ON JANUARY 19TH OF 2018, PLEASE.

9 ALL RIGHT. HOW MUCH TIME DO YOU NEED FOR OPPOSITION?

10 MR. YANCHUNIS: THREE WEEKS?

11 THE COURT: OKAY. FEBRUARY 9 IS THE OPPOSITION.
12 THAT IS 2-9-2018.

13 WHAT ABOUT FEBRUARY 19 FOR THE REPLY?

14 MS. MORTIMER: I'M SORRY? FEBRUARY?

15 THE COURT: 19. THAT GIVES YOU TEN DAYS.

16 MS. MORTIMER: YOUR HONOR, WOULD IT BE POSSIBLE TO
17 GET 15?

18 THE COURT: WELL, THEY'RE ONLY GETTING THREE WEEKS
19 FOR A REPLY.

20 MS. MORTIMER: THAT DATE IS FINE, YOUR HONOR.

21 THE COURT: OKAY. SO OCTOBER 19 -- I'M SORRY --
22 FEBRUARY 19 OF 2018.

23 MS. MORTIMER: YOUR HONOR, WOULD THE SAME PAGE LIMITS
24 STAY IN PLACE?

25 THE COURT: LET ME JUST DOUBLE-CHECK. WHAT WERE

1 THOSE LIMITS?

2 MR. YANCHUNIS: 32, 32, AND 15.

3 THE COURT: THAT'S FINE. THAT'S FINE.

4 ALL RIGHT. THEN THE HEARING, LET'S SEE. SO IF WE HAVE IT
5 THE 19TH, THEN WE CAN --

6 LET ME ASK, WHAT DOES APRIL 5TH LOOK LIKE?

7 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
8 CLERK.)

9 THE COURT: OKAY. WHAT IF WE SPECIALLY SET THIS THEN
10 ON TUESDAY, APRIL THE 3RD? NOW, THAT ONLY GIVES US -- OH, THAT
11 ONLY GIVES US TWO WEEKS TO WORK ON A -- WHAT ABOUT FRIDAY,
12 THE 6TH, APRIL 6TH?

13 THE CLERK: YOUR HONOR, THERE ARE NO MATTERS
14 PRESENTLY SET ON THAT DATE.

15 THE COURT: I WOULD -- I CAN'T DO IT THE WEEK OF THE
16 12TH. ALTHOUGH I -- ACTUALLY, THAT DATE CAN MOVE UP. THAT
17 COULD BE ADVANCED.

18 DO WE HAVE OTHER LAW AND MOTION SET ON THE 5TH?

19 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
20 CLERK.)

21 THE COURT: OKAY. LET'S SPECIALLY SET THIS, THEN,
22 PLEASE, FOR APRIL 6TH. I JUST DON'T WANT TO DELAY IT FURTHER.
23 THAT WILL GIVE US LESS THAN THREE WEEKS, BUT THAT WILL
24 HOPEFULLY BE ENOUGH. SO THE HEARING WILL BE APRIL THE 6TH OF
25 2018. AND CAN WE PLEASE SET THAT FOR 2:00? I KNOW YOU PREFER

1 MORNING, BUT I'M GOING TO BE TRAVELLING ON THE 5TH, SO --

2 MS. MORTIMER: YES, YOUR HONOR.

3 THE COURT: OKAY.

4 MR. YANCHUNIS: THAT'S FINE, YOUR HONOR.

5 THE COURT: THAT'S AT 2:00.

6 OKAY. NOW, ASSUMING THAT WE CAN GET THE ORDER OUT,
7 HOPEFULLY, DEPENDING ON THE COMPLEXITY, WITHIN TWO WEEKS OF THE
8 HEARING DATE, THEN HOW MUCH TIME WOULD YOU NEED FOR THE REST OF
9 DISCOVERY?

10 MR. YANCHUNIS: LET ME ASK YOU --

11 THE COURT: UM-HUM. OR ACTUALLY, FOR THE NEXT CLASS
12 CERT MOTION WOULD BE THE NEXT DEADLINE.

13 MR. YANCHUNIS: SO THE SCHEDULE, ON PAGE 4, WOULD THE
14 REST OF THAT SCHEDULE WORK WITH THE COURT?

15 THE COURT: GIVE ME ONE SECOND.

16 MR. YANCHUNIS: IT'S ON PAGE 4, YOUR HONOR.

17 THE COURT: ALL RIGHT. JUST GIVE ME ONE SECOND,
18 PLEASE.

19 MR. YANCHUNIS: YES, MA'AM. DOCKET 143.

20 THE COURT: NOW, YOU HAVE -- LET'S SEE. YOU HAVE
21 CLASS CERT BEING FILED ON JULY 13TH.

22 MR. YANCHUNIS: YES, MA'AM.

23 MS. MORTIMER: WE THINK THE REMAINDER OF THE DATES
24 COULD STAY IN PLACE, YOUR HONOR, NOTWITHSTANDING THE CHANGES TO
25 THE MOTION TO DISMISS DATES.

1 THE COURT: WELL, THIS IS MY ONE CONCERN. IF I GRANT
2 THE MOTION TO DISMISS ON CAUSES OF ACTION FOR WHICH I'VE
3 ALREADY GRANTED WITH LEAVE TO AMEND, THEN I DON'T WANT TO
4 PRE-JUDGE IT, BUT THE LIKELIHOOD THAT I WILL DISMISS WITH
5 PREJUDICE IS HIGH.

6 THE PROBLEM IS, IF THERE ARE NEW CAUSES OF ACTION, I WILL
7 LIKELY HAVE TO DISMISS WITH LEAVE TO AMEND, WHICH WOULD THEN
8 GENERATE A THIRD MOTION TO DISMISS. THAT'S MY CONCERN, THAT IF
9 WE HAVE CLASS CERT ON JULY 13TH, YOU MAY NOT KNOW WHAT'S STILL
10 IN THE CASE, IF THAT MAKES ANY SENSE.

11 MS. MORTIMER: I UNDERSTAND, YOUR HONOR. BUT I --
12 UNLESS I'M MISUNDERSTANDING MR. YANCHUNIS, HE WAS THINKING OF
13 AMENDING WITH RESPECT TO ADDING OTHER STATE LAW CLAIMS, WHICH
14 MIGHT BE DECIDED AS A MATTER OF LAW BASED ON THE CHOICE OF LAW
15 PROVISION.

16 MR. YANCHUNIS: NO. I THOUGHT WE TALKED ABOUT THIS.
17 NO. WE'RE SAYING WE'RE GOING TO EXPLORE THE -- OUR
18 AMENDMENT TO ADD FRAUD -- WE HAVE NOT YET -- JUST COMMON LAW
19 FRAUD.

20 MS. MORTIMER: OH, YOU HAVE A UCL FRAUD NOW. THAT'S
21 WHAT I MEANT.

22 MR. YANCHUNIS: YES, COMMON LAW FRAUD, AS WELL AS,
23 YOU KNOW, THE POSSIBILITY OF INJECTING PUNITIVE DAMAGES.

24 SO THERE -- SO THERE WILL BE NEW THINGS THAT WE SEEK TO
25 EXPLORE, WHICH I THINK THE COURT GRANTED.

1 THE COURT: WELL, MY CONCERN THEN IS THAT WHATEVER IS
2 NEW, IF I DISMISS AND GRANT YAHOO!'S MOTION, I WOULD LIKELY
3 HAVE TO GIVE LEAVE TO AMEND, WHICH WOULD THEN SET US UP FOR A
4 THIRD ROUND.

5 MR. YANCHUNIS: YES, MA'AM.

6 THE COURT: NOW, WE COULD KEEP THIS SCHEDULE AND --
7 OH, WAIT. OH, OKAY. I MISWROTE THAT.

8 THE -- WAIT A MINUTE. I'M SORRY. I MISSPOKE HERE.

9 SO IF YOU'RE FILING ON THE 19TH OF JANUARY AND YOU'RE
10 OPPOSING ON THE 9TH AND YOU'RE REPLYING ON THE 19TH, I
11 MISSPOKE. WHY IS THIS GOING INTO APRIL? THAT'S MY MISTAKE.

12 MARCH 8TH WOULD BE -- LET ME ASK, I'M NOT -- THAT WAS MY
13 MISTAKE. I JUMPED -- I SKIPPED A MONTH.

14 LET ME ASK MS. MASON HOW -- IF WE HAVE THE WEEK OF THE
15 19TH, THE WEEK OF THE 26TH, AND THREE DAYS THE WEEK OF
16 MARCH 5TH, CAN YOU TAKE A LOOK AT MARCH 8TH? HOW DOES THAT
17 LOOK?

18 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
19 CLERK.)

20 MS. MORTIMER: I COULD DO THAT.

21 MR. YANCHUNIS: THAT'S FINE, YOUR HONOR.

22 THE COURT: SO MARCH 8TH, ARE YOU AVAILABLE
23 MARCH 8TH?

24 MS. MORTIMER: YES, YOUR HONOR.

25 THE COURT: OKAY. THEN I WOULD JUST SAY THAT SHOULD

1 BE OUR REGULAR 1:30 LAW AND MOTION CALENDAR.

2 OKAY. SO IF YOU CAN GET -- SO IF YOU'RE TELLING ME THAT
3 YOU THINK YOU CAN KEEP THE CLASS CERT SCHEDULE IF, LET'S SAY
4 YOU GET AN ORDER HOPEFULLY BY MARCH 23RD, WITHIN TWO WEEKS,
5 THEN THAT'S FINE.

6 THE ONLY PROBLEM IS, IF I GRANT YAHOO!'S MOTION, THEN I
7 WILL LIKELY HAVE TO GIVE YOU LEAVE TO AMEND AND THEN WE'LL DO A
8 THIRD ROUND AND I'M NOT SURE THAT WE COULD FIT THAT IN BY THE
9 JULY 13TH DATE.

10 MR. YANCHUNIS: COULD PERHAPS WE COME BACK IN -- OR
11 AT LEAST LEAVE THE POSSIBILITY THAT THIS REMAINS THE SAME? IF
12 YOU HAPPEN TO GIVE US LEAVE TO AMEND AND THERE'S SOMETHING WE
13 WANT LEAVE TO AMEND, WE CAN COMMUNICATE THAT TO YOU AND PERHAPS
14 WE CAN TALK ABOUT A READJUSTMENT?

15 THE COURT: YEAH.

16 MR. YANCHUNIS: OTHERWISE I'LL MARCH FORWARD WITH
17 WHAT YOU HAVE IN THIS ORDER.

18 THE COURT: YOU KNOW WHAT WE COULD ALSO DO, WHICH
19 WOULD BE TIGHT, BUT IF I WERE TO GRANT YAHOO!'S MOTION AND GIVE
20 YOU LEAVE TO AMEND, AND IT SOUNDS LIKE IT'S GOING TO BE ON A
21 PERHAPS NARROWER ISSUES THAT YOU'LL HAVE GUIDANCE ON AND YOU'LL
22 KNOW WHETHER YOU CAN EITHER ALLEGE IT OR NOT. PERHAPS IF WE'VE
23 GOT TO DO A THIRD ROUND, WE CAN DO IT IN AN EXPEDITED TIMEFRAME
24 SO WE COULD STILL KEEP THE REST OF THE SCHEDULE.

25 THAT -- I MEAN, THAT WOULD BE THE OTHER OPTION OF TRYING

1 TO SQUEEZE THAT IN, AND I'LL PRIORITIZE IT SO WE CAN KEEP THE
2 REST OF THE SCHEDULE.

3 MR. YANCHUNIS: YES, JUDGE.

4 THE COURT: SO MAYBE TRY TO DO THAT IN MAY OR EARLY
5 JUNE.

6 MR. YANCHUNIS: THAT WOULD BE FINE.

7 THE COURT: IT SOUNDS LIKE THAT PROBABLY WOULDN'T
8 AFFECT YOUR CLASS CERT MOTION.

9 MS. MORTIMER: IT SHOULDN'T, YOUR HONOR.

10 THE COURT: DAMAGES CERTAINLY WOULDN'T, RIGHT?

11 MR. YANCHUNIS: NO, IT WOULD NOT.

12 MS. MORTIMER: YOUR HONOR, TO THE EXTENT THE FRAUD
13 CLAIM HAS BEEN SOMEWHAT EXPLORED AS A PREDICATE TO UCL, IF IT'S
14 RELATIVELY FOCUSSED, I THINK WE SHOULD BE ABLE TO STAY WITHIN
15 THE SAME TIMEFRAME.

16 THE COURT: OKAY. LET'S DO THAT.

17 THEN I'M LOOKING AT THE REST OF YOUR SCHEDULE. SO YOU
18 HAVE JULY, AUGUST, SEPTEMBER, AND THEN OCTOBER.

19 NOW, I DON'T DO HEARINGS ON WEDNESDAYS, SO LET ME ASK --
20 LET ME ASK MS. MASON WHETHER NOVEMBER 1 IS OPEN FOR US.

21 (DISCUSSION OFF THE RECORD BETWEEN THE COURT AND THE
22 CLERK.)

23 THE COURT: OH, GREAT. SO I CAN AT LEAST ADVANCE
24 YOUR HEARING BY A WEEK. ALL RIGHT.

25 YOU WANT TO KEEP YOUR MEDIATION DEADLINE?

1 MR. YANCHUNIS: YES, MA'AM.

2 THE COURT: YOU KNOW, I WOULD PREFER THAT YOU ADVANCE
3 IT, AND THIS IS WHY: THAT IS JUST ONE DAY BEFORE THE HEARING,
4 SO IF YOU COULD ADVANCE IT, PERHAPS -- WHAT ABOUT THE END OF
5 SEPTEMBER? YOU'LL HAVE THE CLASS CERT REPLY BRIEF AND
6 EVERYTHING EXCEPT THE DEFENDANTS' OPPOSITIONS TO THE
7 PLAINTIFFS' DAUBERT MOTIONS BY SEPTEMBER 21.

8 MR. YANCHUNIS: YES, MA'AM.

9 THE COURT: SO COULD WE ADVANCE IT?

10 MS. MORTIMER: YES, YOUR HONOR.

11 THE COURT: OKAY. WHAT -- WHAT DATE WOULD WORK? I'D
12 LIKE TO DO IT AS SOON AS POSSIBLE. I WOULD PREFER EVEN THAT
13 YOU MAY DO ONE SESSION BEFORE CLASS CERT BRIEFING, OR AT LEAST
14 ONE SESSION AFTER THE MOTION OR AFTER THE OPPOSITION, AND ONE
15 AFTER THE REPLY. I MEAN, YOU'LL BE ABLE TO ASSESS FOR SURE --

16 MR. YANCHUNIS: YES, MA'AM.

17 THE COURT: -- WITH THAT. SO CAN WE ADVANCE THE
18 DEADLINE?

19 MR. YANCHUNIS: YES, YOUR HONOR.

20 MS. MORTIMER: SEPTEMBER 30TH?

21 MR. YANCHUNIS: SEPTEMBER 30TH IS FINE. YOU GAVE US
22 DIRECTION THAT, IN CONNECTION WITH MEDIATION, YOU WOULD LIKE
23 THREE SESSIONS.

24 THE COURT: WELL, I --

25 MR. YANCHUNIS: AND --

1 THE COURT: I DON'T MIND HOW MANY YOU HAVE. I JUST
2 WANT TO ENCOURAGE YOU TO START EARLY IN CASE YOU NEED MORE.

3 MR. YANCHUNIS: NO, NO. I TOOK IT TO HEART. WE'RE
4 GOING TO DO THAT.

5 THE COURT: OKAY.

6 MR. YANCHUNIS: SO WE'RE JUST TALKING ABOUT A
7 DEADLINE.

8 THE COURT: THIS IS A DEADLINE.

9 MR. YANCHUNIS: YES.

10 THE COURT: RIGHT. BUT I DON'T THINK IT MAKES
11 SENSE -- IF YOU SETTLE THE DAY BEFORE, WE WILL HAVE ALREADY
12 DONE ALL THE WORK ON THOSE MOTIONS.

13 MS. MORTIMER: SURE.

14 MR. YANCHUNIS: AND I CLERKED FOR A DISTRICT JUDGE.
15 I KNOW WHAT YOU DO.

16 THE COURT: YEAH.

17 MR. YANCHUNIS: AND I WILL NOT DO THAT TO YOU.

18 THE COURT: YEAH. SO THAT'S WHY I'D LIKE TO SET THAT
19 MEDIATION DEADLINE, SEPTEMBER 30TH WOULD BE GREAT.

20 MS. MORTIMER: WE'LL DO THAT, YOUR HONOR.

21 MR. YANCHUNIS: THANK YOU, JUDGE.

22 THE COURT: OKAY. THANK YOU. YOU KNOW, THE 30TH IS
23 A SUNDAY. LET'S SAY SEPTEMBER 28.

24 MS. MORTIMER: I KEEP PICKING THE WRONG DAYS, YOUR
25 HONOR, BUT THE 28TH.

1 THE COURT: OKAY. SO THE 28TH IS A FRIDAY.

2 ACTUALLY, WE SHOULD CHECK TO MAKE SURE YOUR OTHER DAYS -- THE
3 13TH IS A FRIDAY, THAT'S GOOD; THE 31ST IS A FRIDAY, THAT'S
4 GOOD; THE 21ST IS A FRIDAY, THAT'S GOOD. OKAY, NOVEMBER 1 IS A
5 THURSDAY, THAT'S GOOD.

6 OKAY. SO IF WE HAVE YOUR HEARING, THEN WE CAN KEEP THE
7 REST OF THIS SCHEDULE.

8 DOES THE REST OF THE SCHEDULE WORK FOR THE PARTIES? SO IT
9 WOULD BE A MARCH 1 FACT DISCOVERY CUTOFF; AND THEN EXPERT
10 REPORTS A WEEK LATER; THEN YOU'LL TAKE THE DEPOSITION; AND THEN
11 THE DEFENSE REPORTS; AND THEN CLOSE OF EXPERT DISCOVERY IS THE
12 26TH OF APRIL.

13 AND LET ME JUST ASK MS. MASON, AUGUST 1, 2019, ARE WE
14 AVAILABLE ON THAT DATE?

15 THE CLERK: YES, YOUR HONOR. THERE ARE NO MATTERS
16 PRESENTLY SET.

17 THE COURT: OKAY, GREAT.

18 COULD YOU ALSO PLEASE CHECK SEPTEMBER 5, 2019?

19 THE CLERK: THE SAME, YOUR HONOR, NO MATTERS
20 PRESENTLY SET.

21 THE COURT: OKAY. AND THEN WHAT ABOUT
22 SEPTEMBER 23RD?

23 THE CLERK: THERE ARE NO MATTERS PRESENTLY SET.

24 THE COURT: OKAY, GOOD. SO ALL THAT IS GOOD.

25 AND THEN CAN YOU PLEASE CHECK NOVEMBER 21 OF 2019?

1 THE CLERK: NO MATTERS PRESENTLY SET, YOUR HONOR.

2 THE COURT: OKAY. ALL RIGHT, GOOD.

3 SO THE REST OF THIS SCHEDULE SEEMS TO WORK, SO THANK YOU.
4 THAT'S GOOD.

5 SO WHAT WE'LL DO IS JUST ISSUE A CASE MANAGEMENT ORDER
6 WITH THE NEW DATES WE AGREED UPON, BUT THAT INCORPORATE ALL OF
7 YOUR DATES FROM CLASS CERT TO THE END, WITH ONLY THE
8 MODIFICATION OF THE HEARING BY LESS THAN A WEEK ON CLASS CERT,
9 AND THE MEDIATION DEADLINE.

10 NOW, LET'S SET A FURTHER CMC, AND I'M HAPPY FOR IT TO BE
11 SOON JUST TO MAKE SURE THAT THIS PROCESS GOES SMOOTHLY. SO
12 WHEN WOULD YOU LIKE TO COME BACK? AND, YOU KNOW, IF IT TURNS
13 OUT YOU HAVE NO ISSUES, I WILL JUST VACATE IT, OR AT LEAST I'LL
14 CONTINUE IT TO ANOTHER DATE AND I WILL NOT REQUIRE THAT YOU
15 COME IN.

16 SO WHAT WOULD YOU LIKE?

17 MR. YANCHUNIS: DO YOU WANT IT THREE WEEKS OUT?

18 THE COURT: THAT'S FINE.

19 MR. YANCHUNIS: SO THAT WOULD BE THE --

20 THE COURT: LET'S SEE WHAT THAT IS. TODAY IS THE
21 13TH. SO NOVEMBER 3RD? AND IF THERE ARE NO ISSUES, LIKE I
22 SAID, I'LL VACATE IT.

23 THE CLERK: YOUR HONOR, YOU'RE UNAVAILABLE ON
24 NOVEMBER THE 3RD.

25 THE COURT: OH, THANK YOU.

1 OH, I THINK WE'RE IN TRIAL, RIGHT, ON DOCTORS BELCHER AND
2 GANESH IN NOVEMBER?

3 THE CLERK: I BELIEVE WE HAVE THAT WEEK OFF.

4 THE COURT: SO I THINK I'M GOING TO HAVE TO DO IT ON
5 A WEDNESDAY OR A THURSDAY IN NOVEMBER.

6 MR. YANCHUNIS: WOULD THE 1ST WORK, KEEPING THAT SAME
7 WEEK?

8 THE COURT: WHICH ONE?

9 MR. YANCHUNIS: THE 1ST?

10 THE COURT: THAT'S FINE. NOW, YOU'RE NOT GOING TO
11 GET ANY OF THEIR DISCOVERY UNTIL THE 13TH AND YOU WON'T GET
12 THEIR 30(B)(6) UNTIL THE 17TH. OR DO YOU THINK YOU'LL GET --
13 WELL, YOU -- LET ME ASK IF YAHOO! WOULD, INSTEAD OF WAITING AND
14 JUST DUMPING EVERYTHING ON THE 13TH, IF YOU'D BE WILLING TO
15 SORT OF INCREMENTALLY PRODUCE WHAT YOU HAVE AVAILABLE?

16 MS. MORTIMER: ABSOLUTELY, YOUR HONOR.

17 THE COURT: OKAY.

18 MS. MORTIMER: WE HAD INTENDED TO PRODUCE ON A
19 ROLLING BASIS.

20 THE COURT: OKAY. THANK YOU.

21 SO WHEN --

22 MR. YANCHUNIS: WELL, LET ME MAKE SURE I UNDERSTAND.
23 YOU WANT TO KNOW IF WE'RE MOVING ALONG WITH WHAT WE'RE -- WHAT
24 YOU'VE CHARGED US TO DO, WHICH WOULD MEAN THAT WOULD INDICATE
25 YOU WANT US TO COME BEFORE YOU BEFORE THE DISCOVERY RESPONSE IS

1 DUE. NO?

2 THE COURT: NO.

3 MR. YANCHUNIS: OKAY.

4 THE COURT: I JUST WANT TO CHECK IN AND MAKE SURE
5 EVERYTHING IS RUNNING SMOOTHLY.

6 SO I CAN, YOU KNOW, SET IT ANY DAY YOU WANT. AND IF YOU
7 NEED LESS THAN SEVEN DAYS TO FILE THE JOINT CASE MANAGEMENT
8 STATEMENT, THAT'S OKAY, TOO. WE'LL JUST SET THE DATE FOR THAT
9 AS WELL. SO WHAT --

10 MR. YANCHUNIS: WELL, HOW ABOUT -- SINCE -- HOW ABOUT
11 THE 16TH? AND WE'LL BE -- WE'LL FILE A STATUS REPORT EARLIER
12 THAN WE NORMALLY WOULD, MAYBE THE 9TH.

13 MS. MORTIMER: WHAT DATE IS THAT?

14 MR. YANCHUNIS: THAT'S A THURSDAY.

15 THE COURT: NOW, YOU MIGHT BE TAKING THAT DEPOSITION.
16 YOU'LL HAVE THE DOCUMENTS ON THE 13TH, THAT'S THE DEADLINE.
17 YOU HAVE THE DEADLINE FOR THE DEPOSITION OF THE 17TH. YOU WANT
18 TO DO IT, LIKE, THE 10TH OR THE 9TH?

19 MR. YANCHUNIS: THAT'S FINE.

20 THE COURT: AND JUST MAKE SURE THAT -- I WILL WANT TO
21 KNOW HOW MUCH DISCOVERY HAS BEEN PRODUCED BY THAT POINT.

22 MR. YANCHUNIS: WHY DON'T WE DO THAT? WE CAN GIVE
23 YOU AN UPDATE ON WHERE WE ARE IN CONNECTION WITH EVERYTHING
24 THAT WE'VE TALKED ABOUT HERE TODAY.

25 THE COURT: AND I'LL WANT TO KNOW THE DEPOSITION IS

1 SET FOR THE NEXT WEEK AND, YOU KNOW, JUST THAT YOU THINK THINGS
2 ARE READY TO GO.

3 I APPRECIATE YOU ALL WORKING WITH ME ON THIS. I JUST WANT
4 TO -- YOU KNOW, WE'RE A BIT DELAYED NOW AND I JUST WANT TO MAKE
5 SURE THINGS ARE ON TRACK FOR US TO BE ABLE TO SORT OF HOPEFULLY
6 RECOUP SOME OF THE TIME THAT WE'VE LOST.

7 SO LET'S SAY NOVEMBER THE 9TH, WE HAVE OTHER THINGS ON
8 CALENDAR, BUT I THINK THAT'S FINE FOR A CMC.

9 DO YOU AGREE, MS. MASON? I THINK IT LOOKS FINE.

10 THE CLERK: YES, YOUR HONOR.

11 THE COURT: OKAY. SO WE'LL HAVE A CMC ON
12 NOVEMBER THE 9TH. AND WHEN DO YOU WANT TO FILE YOUR JOINT CASE
13 MANAGEMENT STATEMENT? ON THE 6TH? ON THE 3RD? IT --

14 MS. MORTIMER: THE 6TH, YOUR HONOR.

15 THE COURT: OKAY. AND IN THAT, I WILL WANT TO KNOW
16 DETAILS, HOW MUCH DISCOVERY HAS BEEN PRODUCED AT THAT POINT;
17 WHAT'S OUTSTANDING TO BE PRODUCED; WHAT'S THE DATE OF THAT
18 DEPOSITION; WHO IS THE PERSON THAT'S GOING TO BE DEPOSED. I'D
19 LIKE SOME DETAILED UPDATES, OKAY?

20 MR. YANCHUNIS: YES, MA'AM.

21 THE COURT: ALL RIGHT. SO NOVEMBER THE 9TH, THAT'LL
22 BE AT 1:30, PLEASE.

23 OKAY. WHAT ELSE? I'LL ISSUE A CASE MANAGEMENT ORDER WITH
24 ALL THESE DATES IN IT SINCE WE'VE MOVED SOME AROUND JUST SO
25 WE'RE ALL ON THE SAME PAGE.

1 WHAT ELSE? ANYTHING ELSE?

2 MR. YANCHUNIS: I DON'T THINK SO, YOUR HONOR.

3 MS. MORTIMER: NO, YOUR HONOR.

4 MR. YANCHUNIS: THANK YOU.

5 THE COURT: ALL RIGHT. THANK YOU ALL VERY MUCH. I
6 REALLY APPRECIATE YOUR COOPERATION.

7 MR. YANCHUNIS: THANK YOU FOR YOUR TIME.

8 THE COURT: AND I'LL TRY TO GET THE CASE BACK ON
9 TRACK. THANK YOU.

10 MS. MORTIMER: THANK YOU, YOUR HONOR.

11 THE WITNESS: THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU.

13 OH, CAN WE PUT ONE THING ON THE RECORD? AND THAT IS IF IT
14 TURNS OUT -- IT DOESN'T SOUND LIKE THE NEXT COMPLAINT IS GOING
15 TO BE SIGNIFICANTLY LARGER, BUT IF IT IS, THEN I WILL EXPECT
16 THAT WE WILL DO NARROWING.

17 MR. YANCHUNIS: OKAY.

18 THE COURT: MAYBE THAT'S SOMETHING WE CAN TALK ABOUT
19 AT A FUTURE CASE MANAGEMENT CONFERENCE WHEN YOU HAVE A BETTER
20 SENSE OF EXACTLY WHAT YOU THINK YOU'RE GOING TO BE -- IT SOUNDS
21 LIKE YOU'RE NOT AMENDING AS YOU THOUGHT AT THE LAST CASE
22 MANAGEMENT CONFERENCE. IS THAT CORRECT?

23 MR. YANCHUNIS: I -- LOOKING -- YES. I'M TRYING TO
24 LOOK AT EVERYTHING, INCLUDING THE ADMONITION YOU -- YES, MA'AM.
25 SO --

1 THE COURT: IF YOU DO, IT'S COMPLETELY YOUR CALL --

2 MR. YANCHUNIS: I UNDERSTAND THAT.

3 THE COURT: -- WHAT'S IN YOUR COMPLAINT.

4 BUT IF IT IS LARGER, THEN WE MAY NEED TO DO SOME
5 NARROWING.

6 MR. YANCHUNIS: YES, MA'AM.

7 THE COURT: AND AT THAT POINT, I'D PROBABLY PREFER
8 TEN CLAIMS AND I'D PROBABLY GIVE YAHOO! FIVE AND PLAINTIFFS
9 FIVE.

10 MR. YANCHUNIS: YES, MA'AM.

11 THE COURT: YOU GET TO SELECT WHAT WE LITIGATE.

12 MR. YANCHUNIS: OKAY.

13 THE COURT: OKAY?

14 MR. YANCHUNIS: YES, MA'AM.

15 THE COURT: BUT ANYWAY. ALL RIGHT. THANK YOU.

16 MS. MORTIMER: THANK YOU, YOUR HONOR.

17 MR. YANCHUNIS: THANK YOU, YOUR HONOR.

18 (THE PROCEEDINGS WERE CONCLUDED AT 12:05 P.M.)

19

20

21

22

23

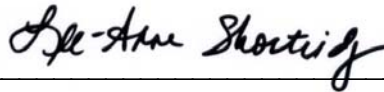
24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: NOVEMBER 3, 2017